

## **REMARKS**

Applicants thanks the Examiner for the very thorough consideration given the present application. Claims 20 – 40 are pending in the application. New claims 32 – 40 have been submitted for substantive examination. The following remarks are believed to be fully responsive to the Office Action, and to render all the claims at issue patentably distinguishable over the cited references.

## **DOUBLE PATENTING**

Claims 20 – 31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 3, 4, 6, 8 – 10, and 12 – 15 respectively of U.S. Patent No. 6,648,105 (Lang). Applicant submits that a terminal disclaimer will be submitted upon allowance of the subject claims.

## **REJECTION UNDER 35 U.S.C. § 102**

Claims 25, 27 – 31 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,588,335 (Strait). These rejections are respectfully traversed.

At the outset, Applicants note that claim 25 has been amended to recite a brake system receiving input from a brake pedal and generating a varying degree of braking power to control a braking device through a service braking stroke. Strait at best discloses a parking brake control device 10. The parking brake control device 10 includes a transfer lever 22 pivotally mounted on the frame 14 by a pivot pin 20 (FIG 1). The transfer lever 22 has a sector gear 24 at one end and a cable 26 pivotally attached to the opposite end by a clevis 28. The cable 26 operates the parking brake in a

conventional manner. The parking brake control device 10 of Strait is only suitable to set a parking brake and does not provide a brake system receiving input from a brake pedal and generating a varying degree of braking power to control a braking device through a service braking stroke, as claimed in the present invention.

Applicants assert that while the Examiner is silent on any rejection pertaining to claim 26, it is now allowable, along with claims 27 – 31 dependant from claim 25.

### **REJECTION UNDER 35 U.S.C. § 103**

Claims 20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strait. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strait in view of U.S. Patent No. 4,310,064 (Kazarian). These rejections are respectfully traversed.

In the most recent Office Action it is unclear to the Applicants what portions of Strait the Examiner is combining with Kazarian. More specifically, the Examiner states that "Strait discloses ... However, Kazarian, Jr. does not teach wherein the vehicle is a golf car". Applicants assume that the Examiner is trying to adopt the parking brake of Strait into the conventional accelerator and brake assembly of Kazarian. The Examiner asserts that it would have been obvious to have used a pedal assembly in a golf cart since pedal assemblies are well known.

Applicants respectfully assert that the combination of Strait and Kazarian is improper. More specifically, the apparatus of Strait is a parking brake, exclusively. Explained further, while Strait and Kazarian each provide an actuating foot pedal, the operational components of Strait are intended to solely provide a parking feature, and

are functionally incompatible with the braking components of Kazarian. The parking brake of Strait includes a ratcheting device (meshed engagement of the pinion gear 32 and the sector gear 24 to position the transfer lever 22) for setting the parking brake.

The brake pedal and accelerator arrangement of Kazarian provides a brake pedal for performing a braking force during normal braking maneuvers. As the brake pedal is depressed, a pin engages a curved cam portion of the latch and rotates the latch in a clockwise direction. When the pedal reaches a floored position, a spring biases a locking edge of the latch into engagement with the pin creating a brake-locked position. A latch release bar extends from the accelerator pedal and, upon depression of the accelerator pedal, is configured to rotate the latch clockwise about the pin allowing the brake to return to an unlocked position.

#### Improper Combination of References

Additionally, Applicants submit that the Examiner has failed to establish a *prima facie* case of obviousness as required by *Graham v. John Deere Co.*, 148 USPQ 459 (1966) and MPEP § 2141. Specifically, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The *references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;*
- (C) *The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention;* and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

**MPEP § 2141.01**

A. THE PRIOR ART MUST SUGGEST THE DESIRABILITY OF THE CLAIMED INVENTION; HOWEVER, NEITHER STRAIT NOR KAZARIAN INCLUDES SUCH SUGGESTION OF DESIRABILITY OF THE CLAIMED INVENTION.

Applicants respectfully submit that there is no teaching, suggestion, or motivation set forth in Strait or Kazarian to combine these references to produce the claimed invention. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP § 2143.01 (emphasis added); *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988).

The Examiner is attempting to combine the teachings of the cited references to invent the present invention without any explicit motivation to combine such teachings. The most recent Office Action is completely silent of any recitation that would direct the Applicants to where such motivation can be explicitly found. The Examiner identifies portions of these patents that he relies upon, but fails to provide citations as to where he finds motivation to combine these references. More importantly, Applicants are being denied the opportunity to refute such motivation, since none is identified by the Examiner.

It is readily apparent that neither Strait nor Kazarian provides any teaching, suggestion, or motivation to combine their teachings. Thus, without a teaching, suggestion, or motivation clearly found in within the text of these references, it is improper to combine these references to establish a rejection of obviousness, unless

the Examiner can show that such teaching, suggestion, or motivation is generally available in the knowledge of one skilled in the art.

In the absence of any objective evidence or any convincing line of reasoning to combine these references, Applicants respectfully submit that each of the references, either singly or in combination, fail to teach or suggest the claimed invention and, thus, the Examiner has failed to establish a *prima facie* case of obviousness. Therefore, Applicants respectfully request reconsideration and withdrawal of the present rejections.

I. A Statement That A Modification Is Well Within The Skill In The Art Is Not Sufficient By Itself To Establish *Prima Facie* Obviousness.

In the most recent Official Action, the Examiner stated that "It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a pedal assembly in a golf cart since pedal assemblies are well known in the art in all vehicles" The Examiner simply picks and chooses among the references elements that allegedly teach the claimed invention. However, the Examiner has failed to show any motivation within these references to make such a combination.

As appropriately stated in MPEP § 2143.01, "[a] statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art' at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993)(emphasis in original); MPEP § 2143.01. That is, it is

the Examiner's burden to identify some objective reason to combine the teachings of the references. However, as stated above, the Examiner merely indicated that such combinations were "obvious". Therefore, Applicants herein respectfully requests the Examiner to identify some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine reference teaching.

As a result, Applicants submit that claims 20 – 23 define patentable subject matter over the art of record. While the Examiner is silent regarding any rejection for claim 24, Applicants submit that claim 24, dependant from claim 20 defines patentable subject matter.

### **NEW CLAIMS**

New claims 32 – 40 have been submitted for substantive examination. Applicants assert that the newly submitted claims define over the art of record.

### **CONCLUSION**

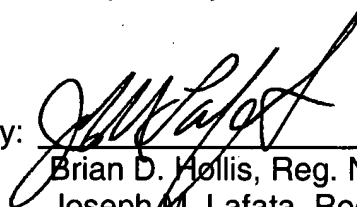
It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the

Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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